

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOHN CHARLES GROSSCURTH,

2:12-CV-375 JCM (CWH)

Plaintiff(s),

V.

STATE OF NEVADA, et al.,

Defendant(s).

ORDER

Presently before the court is the report and recommendation (doc. # 5) by Magistrate Judge Hoffman. Plaintiff timely filed objections (doc. # 6).

This court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the court is required to “make a de novo determination of those portions of the [report and recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1).

The court undertakes a de novo review. Plaintiff filed an application to proceed in forma pauperis and a complaint. (*See* doc. # 1). He then filed an amended complaint. (Doc. # 2). The magistrate judge denied the application to proceed in forma pauperis without prejudice due to discrepancies in the application. (Doc. # 3). The magistrate judge gave a deadline date in the order to correct the deficiencies and warned plaintiff that failure to comply with the order would result in a recommendation that the application be denied with prejudice. (*See id.*).

1 The clerk's office mailed a new application to plaintiff. (*See id.*). The deadline date passed
 2 without plaintiff returning a corrected application. (Doc. # 5). The magistrate judge then issued a
 3 report and recommendation whereby he recommended dismissal of the application with prejudice
 4 for failing to correct the discrepancies or pay the filing fee. (*See id.*).

5 Although plaintiff did not correct his application, he did file an objection to the report and
 6 recommendation. (Doc. # 6). Plaintiff alleges he never received in the mail the blank application
 7 form or the accompanying order (doc. # 3) that denied his application. (Doc. # 6 ("Plaintiff does not
 8 suggest that the Court failed to mail a notification, merely that he did not receive it.")).

9 The court notes at the outset that the defendant used the same address in all his filings with
 10 the court.¹ All correspondence has been with the same address. The clerk's office mailed both the
 11 order denying the in forma pauperis application (doc. # 3) and the report and recommendation (doc.
 12 # 5) to plaintiff's listed address. Neither mailing was returned as undeliverable. Plaintiff cannot
 13 deny he received the latter mailing because he filed an objection with the court.

14 In an abundance of fairness, the court will grant plaintiff a final opportunity to correct his in
 15 forma pauperis application. It is important to note that plaintiff received the report and
 16 recommendation. The report and recommendation, like the order denying the application before it,
 17 lists the discrepancies contained in the in forma pauperis application. Therefore, plaintiff is
 18 undeniably on notice of the deficiencies in his application.

19 The court will permit plaintiff a final opportunity to return a completed and corrected in
 20 forma pauperis application. If the plaintiff does return the application then the magistrate judge will
 21 conduct a final screening.

22 Accordingly,

23 IT IS HEREBY ORDERED, ADJUDGED, DECREED that the court DECLINES to adopt
 24 the magistrate judge's report and recommendation (doc. # 5) at this time because it was mooted by
 25 plaintiff's allegations in the objection.

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27 ¹ That address is 569 Sellers Place, Henderson, NV, 89011.
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1 IT IS FURTHER ORDERED that the clerk of the court shall mail plaintiff a blank
2 application to proceed in forma pauperis.

3 IT IS FURTHER ORDERED that plaintiff will have until February 8, 2013, in which to file
4 a correct and complete application to proceed in forma pauperis.

5 IT IS FURTHER ORDERED that if plaintiff does not return the application by February 8,
6 2013, then the application to proceed in forma pauperis (doc. # 1) is denied with prejudice and the
7 clerk of the court is to enter judgment and close the case.

8 DATED January 23, 2013.

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10 *James C. Mahan*
11 **UNITED STATES DISTRICT JUDGE**
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